

BellSouth Telecommunications, Inc.
2101
333 Commerce Street
Nashville, Tennessee 37201-3300

615 214-6311
Fax 615 214-7406

Patrick Turner
Attorney

August 30, 2000

VIA HAND DELIVERY

Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37245

10:00 PM
REGULATORY AUTH.
• 00 AUG 30 PM 3 21
EXECUTIVE SECRETARY

Re: *Discount Communications, Inc.*
Docket No. 00-00230

Dear Mr. Waddell:

For the past several weeks I have informed Gary Hotvedt that BellSouth and Discount Communications were working on a settlement agreement that would resolve the issues in this docket in a manner that was consistent with the Director's verbal rulings. Henry Walker and I have, in fact, had numerous congenial discussions regarding settlement terms over the past several weeks.

As indicated in the attached letter from Henry Walker, on August 25, 2000, I sent a settlement proposal to him. A copy of that correspondence is attached. As Mr. Walker's letter indicates, he and I both reasonably believed that a settlement on those terms was likely, and in fact, BellSouth remains willing to enter a settlement agreement on those terms.

Regrettably, however, Discount has rejected this offer. Although Mr. Walker indicates that Discount intends to make a counter offer to BellSouth later this week, Mr. Walker states that he is "no longer optimistic that the parties will arrive at a mutually agreeable result and suggest that we so inform the TRA." In light of these events, I feel compelled to inform you that a settlement agreement is not likely to be reached and to request that the TRA enter a written order in this docket.

Mr. David Waddell, Executive Secretary
August 30, 2000
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BellSouth truly regrets the delay that has accompanied these negotiations.

Very truly yours,

A handwritten signature in black ink, appearing to read "Patrick W. Turner". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Patrick W. Turner

PWT/jem

Enclosure

cc: Hon. Gary Hotvedt

CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2000, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☐ Hand
- ☒ Mail
- ☒ Facsimile
- ☐ Overnight

Henry Walker, Esquire
Boult, Cummings, Conners & Berry
414 Union Avenue, #1600
Post Office Box 198062
Nashville, Tennessee 37219-8062

- ☐ Hand
- ☒ Mail
- ☒ Facsimile
- ☐ Overnight

Vance Broemel, Esquire
Consumer Advocate Division
426 Fifth Avenue North
Nashville, Tennessee 37243-0500



**BOULT
CUMMINGS
CONNERS
& BERRY_{PLC}**

LAW OFFICES
414 UNION STREET, SUITE 1600
POST OFFICE BOX 198062
NASHVILLE, TENNESSEE 37219

Henry Walker
(615) 252-2363
Fax: (615) 252-6363
Email: hwalker@bccb.com

TELEPHONE (615) 244-2582
FACSIMILE (615) 252-2380
INTERNET WEB <http://www.bccb.com/>

August 29, 2000

Patrick Turner, Esq.
BellSouth Telecommunications, Inc.
333 Commerce Street
Nashville, Tennessee 37201-3300

Via Facsimile - 214-7406

Re: Complaint of Discount Communications, Inc. Against BellSouth
Telecommunications, Inc.
Docket No. 00-00230

Dear Patrick:

Thank you for your letter of August 18, 2000, proposing a settlement of the above-captioned complaint now pending before the Tennessee Regulatory Authority. As you know, you and I have been attempting to arrive at a proposed settlement for several weeks and, at one point, we both reasonably believed that a settlement was likely.

During a meeting over the weekend, however, the board directors of Discount Communications, after giving your proposal careful consideration, decided that it is not in the company's best interest to accept BellSouth's settlement offer.

It is my understanding that the board intends to make a counter offer to BellSouth on or before Thursday of this week. Based on our previous discussions, however, I am no longer optimistic that the parties will arrive at a mutually agreeable result and suggest that we so inform the TRA.


Once again, thank you for your cooperation in this matter. Please understand that Discount believes strongly in the company's position on the issue of the \$3.50 state Lifeline credit and is not willing, at this time, to acquiesce in the TRA's initial decision on this issue. Although

August 29, 2000
Page 2

the amount of money involved is relatively small, the company believes a larger principle is at stake and has instructed me to pursue appropriate regulatory and judicial remedies.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 
Henry Walker

HW/nl

c: Ed Hayes

Eddie Roberson, Director, Consumer Services Division



BellSouth Telecommunications, Inc.
2101
333 Commerce Street
Nashville, Tennessee 37201-3300

615 214-6311
Fax 615 214-7406

Patrick Turner
Attorney

August 25, 2000

VIA TELECOPIER
(615) 252-6363

Henry Walker, Esquire
Boult, Cummings, Conners & Berry
414 Union Street, Suite 1600
Post Office Box 198062
Nashville, Tennessee 37219-8062

Re: Discount Communications, Inc.
Docket No. 00-00230

Dear Henry:

Attached are the final versions of the Proposed Settlement Agreement and the Petition for Approval of Amendment to Resale Agreement Negotiated Between BellSouth Telecommunications, Inc. and Discount Communications Pursuant to the Telecommunications Act of 1996. I would like to confirm my understanding that Discount has agreed to the terms of these documents and that all we are waiting on now is for Discount to provide documentation: (1) supporting its claims for the \$4040 in promotional credits referenced in paragraph 3(B) of the Proposed Settlement Agreement; (2) showing which Discount Link-up end users who signed on after April 12, 2000 and before August 1, 2000 did not get any Link-up credit; and (3) showing the total number of Link-up end users Discount has signed up to date. If my understanding is not correct, please notify me immediately.

Sincerely,

A handwritten signature in black ink that reads "Patrick W. Turner". The signature is written in a cursive, flowing style.

Patrick W. Turner

PWT/jem

Enclosure

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In Re: *Discount Communications, Inc.*

Docket No. 00-00230

PROPOSED SETTLEMENT AGREEMENT

This Proposed Settlement Agreement ("Agreement") is entered into on this the ____ day of August, 2000 by and between BellSouth Telecommunications, Inc., ("BellSouth"), Discount Communications, Inc. ("Discount"), and the Consumer Advocate Division ("CAD"). In resolution of their respective claims, defenses, and positions in this docket, BellSouth, Discount, and the CAD agree to the following terms and conditions:

1. This Agreement binds neither BellSouth, Discount, nor the CAD unless and until it is approved by the Tennessee Regulatory Authority ("Authority") as submitted.
2. Discount and BellSouth acknowledge that the bill BellSouth submitted to Discount on or about July 4, 2000 ("the July 4 Bill") indicates a total balance of \$390,091.53.
3. BellSouth will take the following actions with regard to Discount's bill to resolve the current disputes as indicated:
 - A. **Directory Assistance.** BellSouth will issue a credit in the amount of \$45,219.74, which is the total amount of directory assistance charges BellSouth has billed Discount through the July 4 Bill.
 - B. **Promotional Offerings.** BellSouth will issue a credit in the amount of \$4,040 to resolve Discount's disputes regarding

credits it allegedly did not receive for certain promotional offerings through the July 4 Bill.

- C. **Conceded Link-Up Credits.** Discount and BellSouth agree that with regard to Discount's Link-Up end users, BellSouth should seek a federal credit in the amount of at least one-half of BellSouth's non-recurring charges for connection of service (up to a maximum of \$30) and pass that amount of credit along to Discount. On April 12, 2000, BellSouth applied a credit in the amount of \$24,443.50 to Discount's bill to resolve Discount's claim that as of that date, BellSouth had failed to apply this credit to some of Discount's Link-Up end users. Discount submits that since that credit was applied, BellSouth has failed to apply this credit to Link-Up end users that subsequently signed on with Discount. BellSouth will issue a credit in the amount of \$6,400 to resolve this subsequent dispute.
- D. **Contested Link-Up Credits.** Discount submits that with regard to Discount's Link-Up end users, BellSouth should seek a federal credit in the amount of one-half of Discount's non-recurring charges for connection of service (up to a maximum of \$30) and pass that amount of credit along to Discount. BellSouth and Discount have submitted this dispute to the FCC for resolution, and BellSouth will hold all collections efforts regarding the amount of such disputes in abeyance pending a decision by the FCC. BellSouth and Discount agree that \$14,500 represents the total amount of such disputes through the July 5 Bill.
- E. **Unconfirmed Payments.** Discount submits that \$26,600 in payments (Check No. 1333 in the amount of \$13,300 drawn on Union Planters Bank and dated July 16, 1999; and an "Official Check" with illegible number in the amount of \$13,300 drawn on Union Planters Bank and dated July 16, 1999) have not been credited to its account and BellSouth submits that it has not received these payments. Copies of these checks are attached hereto as Exhibits 1 and 2. BellSouth and Discount mutually agree to fully cooperate in good faith with one another (and with all necessary financial institutions) to determine the whereabouts of these \$26,600 payments. To the extent that it is determined that BellSouth has received these payments, BellSouth will issue the appropriate credits to Discount's bill. To the extent that it is determined that BellSouth did not receive these payments, Discount will pay BellSouth the appropriate amount within 14 days after such determination.

4. Discount agrees that as of the July 4 Bill, it owes BellSouth \$293,331.79 (the \$390,091.53 balance less the \$96,759.74 in credits set forth in Paragraph 3 above).

5. Discount agrees to release and remit the entire balance of the escrow account (established in accordance with the "Compromise Agreement" entered in this Docket) to BellSouth within three (3) business days of the TRA's approval of this Proposed Settlement Agreement, and BellSouth agrees to apply this amount to the \$293,331.79 Discount owes BellSouth as of the July 4 Bill.

6. Discount agrees to pay BellSouth the difference between the \$293,331.79 it owes BellSouth as of the July 4 Bill and the balance of the escrow account released to BellSouth pursuant to Paragraph 5 above in eight (8) monthly installments of equal amount. These payments shall be due on the 1st day of each month, beginning the 1st day of the calendar month following the TRA's approval of this Proposed Settlement Agreement.

7. In addition to the installments referenced in Paragraph 6 above, Discount also agrees to timely pay the current charges listed on the BellSouth bills issued after July 4, 2000. If Discount disputes any portion of the current charges set forth in any such BellSouth bill, Discount agrees to submit a BellSouth Interconnection Billing Adjustment Request form (RF 1461) detailing such disputes to BellSouth before the date such charges become due. Such forms shall be faxed to 205-321-2724.

8. BellSouth and Discount agree that within 10 days of the TRA's approval of this Proposed Settlement Agreement, they will jointly submit a Petition for Approval of Amendment to their existing resale agreement, the form and substance of which shall be substantially similar to that attached hereto as Exhibit 3.

9. Discount waives its right to file a judicial appeal of the Tennessee Regulatory Authority's oral decision regarding the \$3.50 state Lifeline credit as addressed in BellSouth's current Tennessee tariffs. BellSouth and Discount acknowledge that Discount does not waive its right to seek a prospective modification of BellSouth's Lifeline tariff to require BellSouth, on a going-forward basis, to pass the \$3.50 state Lifeline discount amount through to resellers such as Discount.

10. All parties agree that the TRA's approval of this Proposed Settlement Agreement shall conclude this docket in its entirety and, therefore, they request the TRA to dismiss this docket with prejudice upon its approval of this Proposed Settlement Agreement.

BELLSOUTH TELECOMMUNICATIONS, INC.

By: _____

Patrick W. Turner
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300
(615) 214-6311

222607

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In re: *Approval of Amendment to the Resale Agreement Negotiated by
BellSouth Telecommunications, Inc. and Discount Communications
Pursuant to Sections 251 and 252 of the Telecommunications Act of
1996*

Docket No. _____

PETITION FOR APPROVAL OF AMENDMENT TO
THE RESALE AGREEMENT NEGOTIATED BETWEEN
BELLSOUTH TELECOMMUNICATIONS, INC.
AND DISCOUNT COMMUNICATIONS
PURSUANT TO THE
TELECOMMUNICATIONS ACT OF 1996

COME NOW, Discount Communications ("Discount") and BellSouth Telecommunications, Inc., ("BellSouth"), and file this request for approval of the Amendment to the Resale Agreement dated March 13, 1998 and amended September 3, 1998 (the "Amendment") negotiated between the two companies pursuant to Sections 251 and 252 of the Telecommunications Act of 1996, (the "Act"). In support of their request, Discount and BellSouth state the following:

1. Discount and BellSouth have successfully negotiated an agreement providing for the resale of BellSouth's telecommunications services to Discount. The Resale Agreement and Amendment thereto were approved by the Tennessee Regulatory Authority ("TRA") on February 16, 1999.

2. The parties have recently negotiated an Amendment to the Resale Agreement which adds an additional subsection to Section IV of the Resale Agreement. This new subsection generally provides that, given the unique

circumstances surrounding Discount, Discount is not required to pay BellSouth for directory assistance services in the State of Tennessee during the term of the Resale Agreement as long as Discount does not bill its end users in the State of Tennessee for directory assistance services. A copy of the Amendment is attached hereto and incorporated herein by reference.

3. Pursuant to Section 252(e) of the Telecommunications Act of 1996, Discount and BellSouth are submitting their Amendment to the TRA for its consideration and approval.

4. In accordance with Section 252(e) of the Act, the TRA is charged with approving or rejecting the negotiated Amendment between Discount and BellSouth within 90 days of its submission. The Act provides that the TRA may only reject such an agreement if it finds that the agreement or any portion of the agreement discriminates against a telecommunications carrier not a party to the agreement or the implementation of the agreement or any portion of the agreement is not consistent with the public interest, convenience and necessity.

5. Discount and BellSouth aver that the Amendment is consistent with the standards for approval.

6. Pursuant to Section 252(i) of the Act, BellSouth shall make the Agreement available upon the same terms and conditions contained therein.

Discount and BellSouth respectfully request that the TRA approve the Amendment negotiated between the parties.

This _____ day of _____, 2000.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: _____

Guy M. Hicks

333 Commerce Street, Suite 2101

Nashville, TN 37201-3300

(615) 214-6301

Attorney for BellSouth

CERTIFICATE OF SERVICE

I, Guy M. Hicks, hereby certify that I have served a copy of the foregoing Petition for Approval of the Amendment to the Resale Agreement on the following via United States Mail on the ____ day of _____, 2000:

Mr. Edward Hayes
Discount Communications
6647 Steeplechase Circle
Memphis, Tennessee 38141

Guy M. Hicks

Amendment

The Resale Agreement between Discount and BellSouth is amended by adding the following as a new and additional subsection of Section IV of the Resale Agreement:

E. Discount and BellSouth understand and agree that within the State of Tennessee: (1) Discount has elected to operate under a pre-pay business model which relies, in large part, on Discount's ability to prevent its customers from incurring per-use charges that are billed in arrears; (2) both at the time Discount made this election and at the time Discount and BellSouth entered into this Resale Agreement, BellSouth's Tennessee tariffs did not provide for a charge for directory assistance services; (3) at the time Discount and BellSouth entered this Resale Agreement, Discount claims that it did not believe that it would be charged for directory assistance in Tennessee during the term of that Resale Agreement; (4) based on the foregoing, Discount did not subscribe to any of BellSouth's billing services that would allow Discount to bill its Tennessee end-users for per-use charges and it took no other actions to bill its end users for directory assistance during the term of the Resale Agreement; (5) Discount does not bill its end user customers for directory assistance services it resells from BellSouth; (6) when BellSouth began charging Discount for directory assistance pursuant to its Tennessee tariffs, Discount challenged BellSouth's ability to charge for directory assistance in Tennessee under the existing resale agreement; (7) BellSouth did not agree with Discount's challenge and continued billing Discount for directory assistance in the State of Tennessee; (8) Discount initiated a contested case proceeding against BellSouth before the Tennessee Regulatory Authority which, in part, challenged BellSouth's right to charge Discount for directory assistance in Tennessee under the existing resale agreement; and (9) this amendment is submitted as a condition of a settlement agreement resolving that contested case proceeding. Based on these facts and conditions, Discount and BellSouth agree that notwithstanding the contrary provisions in this Resale Agreement, Discount Communications is not required to pay BellSouth for directory assistance services in the State of Tennessee during the term of this Resale Agreement. Discount agrees that if it begins billing its end users in the State of Tennessee for such directory assistance services during the

term of this Resale Agreement, Discount will immediately notify BellSouth of such billing. In such event, Discount and BellSouth acknowledge that BellSouth does not waive its right to seek a modification of this Agreement to require Discount to pay BellSouth for such directory assistance services to the extent that Discount bills its end users for such services.